

Privy Council Appeal No. 9 of 1917.

Nalluri Kristnamma and another - - - - - *Appellants*

v.

Kamepalli Venkatasubbayya and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY, 1919.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

SIR JOHN EDGE.

MR. AMEER ALI.

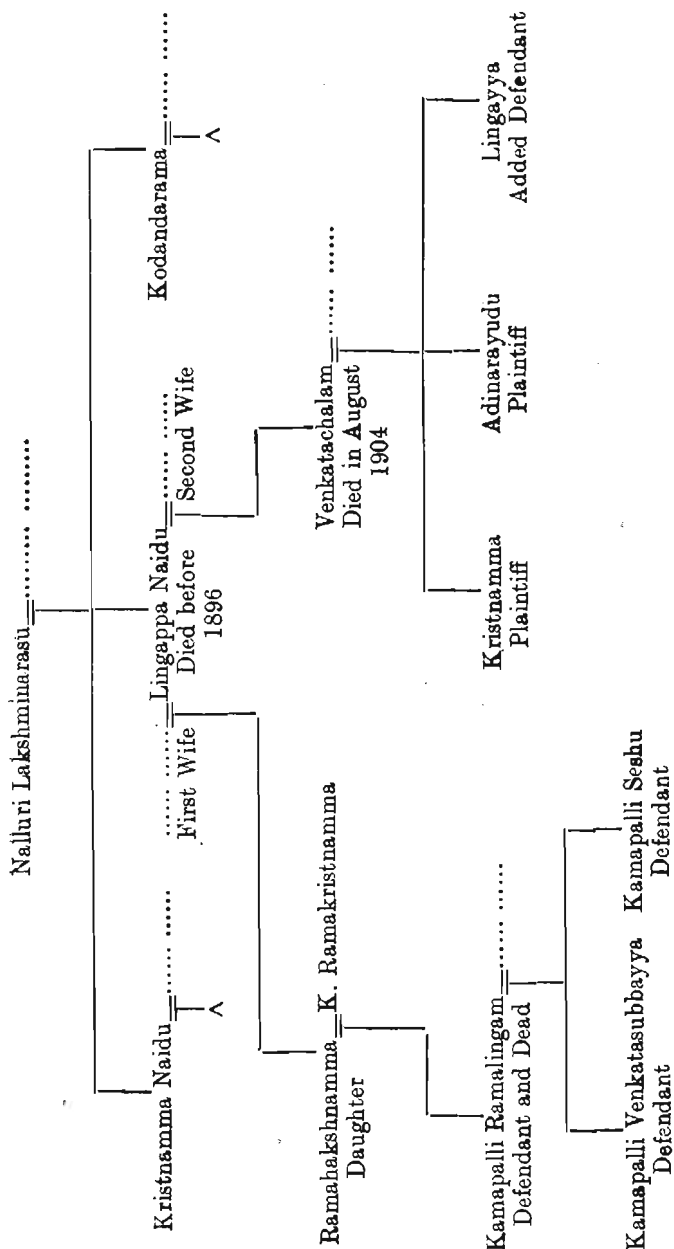
[*Delivered by* SIR JOHN EDGE.]

This is an Appeal by the plaintiffs from a decree, dated the 11th September, 1914, of the High Court at Madras, which affirmed a decree, dated the 19th December, 1910, of the Subordinate Judge of Guntur, which dismissed the suit. The suit in which this appeal has arisen was instituted on the 27th April, 1906, in the Court of the District Judge of Guntur, and was subsequently transferred to the Court of the Subordinate Judge in which it was entered as Original Suit No. 1 of 1910. The plaintiffs in this suit (No. 1 of 1910) were Nalluri Krishnamma and his brother, Nalluri Adinarayudu. The original defendants in this suit were Kamepalli Ramalingam, who is now dead, and his sons, Kamepalli Venkatasubbayya, and Kamepalli Seshu. Nalluri Lingayya, who is a natural brother of these plaintiffs, was added as a defendant

to the suit on the 17th September, 1908, and is a nominal respondent to this appeal. He has not appeared, and it has been stated by counsel for the appellants that Nalluri Lingayya has been adopted, according to Hindu law, into another family, and is not interested in the suit or in this appeal.

In 1907 Kamepalli Ramalingam and his sons, Kamepalli Venkatasubbayya and Kamepalli Seshu, instituted a suit in the Court of the District Judge of Guntur against Nalluri Kristnamma, Nalluri Adinarayudu, and others, which was subsequently transferred to the Court of the Subordinate Judge, in which it was entered as Original Suit No. 2 of 1910. The two suits (No. 1 of 1910 and No. 2 of 1910) were tried together by the Subordinate Judge, and the evidence in each suit was used in the other. The Subordinate Judge made a separate decree in each suit. Those decrees were appealed to the High Court at Madras, which dismissed the appeal from the decree in Suit No. 2 of 1910, and from that decree of the High Court there has been no appeal.

The relationship of the parties to the suit will be seen from the following pedigree :—



The main question in this appeal relates to an alleged *illatom* adoption of Ramakristnamma as his *illatom* son-in-law by Lingappa Naidu. If that *illatom* adoption is established as valid in law the suit of the plaintiffs fails and must be dismissed. The factum of that adoption cannot now be disputed and is not disputed in this appeal, but it is contended on behalf of the appellants that Lingappa Naidu could not legally take Ramakristnamma as his *illatom* son-in-law because at the time of the adoption he had a natural son, Venkatachalam, living, and also because at that time Lingappa Naidu was joint with his brothers, Kristnamma Naidu and Kodandarama, and no custom authorising an *illatom* adoption under such circumstances has been proved. The parties are Hindus of the Sudra caste and sub-caste Kamma, and are governed by the law of the Mitakshara except in so far as that law has been altered by custom. The law of the Mitakshara would not allow a Hindu to adopt a son when he had a natural born son living. But if a custom was proved allowing a Kamma to take an *illatom* son-in-law when he had a natural born son living, both grounds of objection to the *illatom* adoption in this case would fail.

The three sons of Nalluri Lakshminarasu with their families lived together as a joint Hindu family in the village of Mangamoor, and as a joint family possessed a large ancestral estate and some movable property. Mangamoor is a village of Guntur in Nellore. Lingappa Naidu was twice married. He had by his first wife a daughter, Ramalakshnamma, who over 60 years ago married Kamepalli Ramakristnamma and bore to him a son, Kamepalli Ramalingam, who was the father of the defendants-respondents, Kamepalli Venkatasubbayya and Kamepalli Seshu. By his second wife Lingappa Naidu had a son, Venkatachalam, who was the father of the plaintiffs and of the added defendant. Kamepalli Ramakristnamma was a near relation of Lingappa Naidu, and lived in his house as one of his family, and assisted in the management of the property. Lingappa Naidu took Kamepalli Ramakristnamma as his *illatom* son-in-law after Venkatachalam was born, and when Venkatachalam was three or four years of age promising to give him a share of his property. Lingappa Naidu died before 1896. In 1896 his two surviving brothers, Kristnamma Naidu and Kodandarama, and their nephew, Venkatachalam, separated and partly partitioned the family estate. Venkatachalam died on the 23rd August, 1904. The Subordinate Judge found as a fact that Ramakristnamma lived in the family with his wife and children, and that after his death Kamepalli Ramalingam, Kamepalli Venkatasubbayya, and Kamepalli Seshu continued to live in the family, and lived with Venkatachalam after the division of 1896 until about six months before Venkatachalam's death; that finding was not dissented from by the High Court. The Subordinate Judge considered that those facts corroborated the evidence, which he believed, that there had been an *illatom* adoption.

In 1904 it was arranged between Kamepalli Ramalingam, as representing himself and his sons, and Venkatachalam, as representing himself and his sons, in the presence of mediators that their joint family properties should be divided into three shares, and that Kamepalli Ramalingam and his sons should take one share, and should leave the remaining two shares to Venkatachalam and his sons.

On the 5th September, 1905, the plaintiff, Nalluri Kristnamma, signed and presented to the Tahsildar the following statement :—

“ The deceased Nalluri Venkatachalam, who was Pathadar Nos. 2312, 2313, in Mangamoor, is my father. In the said *pattas*, which stand in my father's name, the following 13 names should be included :—

“ 1. Myself, Nalluri Kristnamma.

“ 2. Nalluri Andinarayadu.

“ 3. Nalluri Lingayya.

“ 4. Kamepalli Ramalingam.

“

“ All these are sharers in the family.”

The evidence shows that a joint *patta* was accordingly issued.

In this suit the Subordinate Judge framed the following issues amongst others :—

- (ii) Whether Ramakristnamma, father of the 1st defendant, was taken as *illatom* son-in-law by Lingappa Naidu, and, if so, whether such taking is valid in law ?
- (iii) Whether there was an agreement or arrangement that a one-third share of the family properties should be given to the 1st defendant as alleged in his written statement, and, if so, this agreement or arrangement is valid or binding on plaintiffs ?
- (iv) Whether, as alleged by the defendants, there was a partition in November, 1904, and, if so, what properties were divided and allotted to what shares and what properties were reserved for future division or joint enjoyment ?
- (v) Whether defendants have joint right with the plaintiffs to the suit properties, items Nos. 8, 15 to 55, and 59 in the Plaint-Schedule A; if so, is the suit for declaration in respect of these items maintainable ?

For the reasons recorded in his judgment in Original Suit No. 2 of 1910 the Subordinate Judge found the issues (ii) to (v) against the plaintiffs.

On the question whether Lingappa Naidu having at the time of the *illatom* adoption a natural born son and two undivided brothers living could lawfully have taken Ramakristnamma as an *illatom* son-in-law, the Subordinate Judge stated :—

“ The parties in the present case belong to the Kamma caste, and in this respect (the right to make *illatom* adoptions) there is no difference between them and the Reddis. The practice of *illatom* affiliation is very common in both castes.”

There is evidence in this record that the custom of taking an *illatom* son-in-law is the same in the Kamma caste and in the Reddi caste. The Subordinate Judge then referred in general

terms to the witnesses who had given evidence on behalf of Kamepalli Ramalingam and his sons as to the custom of *illatom* adoptions, and particularly observed that one of their witnesses, a Kamma, had given two instances in which where brothers were living jointly one of them had taken an *illatom* son-in-law. The Subordinate Judge then stated :—

“ Defendants’ witnesses (that is witnesses on behalf of the defendants in Suit No. 2 of 1910, who are the plaintiffs in this suit) 5, 6, 8, 9 and 11 say that a Kamma takes an *illatom* son-in-law only when he has no son or undivided brother. This is a matter of opinion. The evidence in this case is insufficient to establish a special custom. But I think that as the custom of *illatom* affiliation has been judicially recognised, it is for the defendants (the plaintiffs in this Suit No. 1 of 1910) to show that a father living with a son and an undivided brother cannot exercise that right. In the present case the first plaintiff’s (Kamepalli Ramalingam’s) father was, I think, treated by all members of the family as an *illatom* son-in-law, and after his death the plaintiffs (original defendants in Suit No. 1 of 1910) continued to live as members of joint family till six months before Venkatachalam’s death. I therefore find the first issue in the affirmative.”

The first issue which the Subordinate Judge so found in the affirmative was “ Whether the plaintiffs’ brother (Ramakrishnamma) was taken as *illatom* son-in-law by Lingappa Naidu, and, if so, whether such taking is valid in law.”

In the judgment on the appeal the learned Judges, Sankaran Nair and Spencer, JJ., say :—

“ The adoption took place more than 50 years ago, when Lingayya was living with his two brothers as members of an undivided family. Ever since the adoption or marriage, Ramakrishnamma was living with the other members of the family. An *illatom* son is adopted when assistance is needed by the adoptor in the cultivation of the family estate or for its management; and, in this case, there is no doubt that Ramakrishnamma participated in the management of the estate. When a partition was effected between Lingayya and his brothers, Ramakrishnamma was treated as a member of Lingayya’s (Lingappa’s) branch and remained with them. Shortly before Venkatachalam’s death in August, 1904, there was an agreement for partition between him and Ramakrishnamma.

“ This, no doubt, is denied by the appellants. But Ramakrishnamma’s descendants are admittedly in exclusive possession of certain properties which were in the possession of Venkatachalam, and the appellants’ plea that such possession was obtained by trespass is not proved. Their complaint was dismissed by the Magistrate; and the Judge rightly points out that possession by trespass is inconsistent with the fact that the respondents are in possession of portions of properties. After Venkatachalam’s death, his son, one of the appellants before us, called Ramakrishnamma’s son a co-sharer (Exhibit B2). This conduct of the family for about 50 years and the agreement for partition in particular is very strong evidence against the appellants.

“ It is contended before us that an *illatom* adoption made when there is a son living is invalid. It is true that an adoption is invalid under Hindu Law when the adoptive father has a son. But, *illatom* adoption itself is opposed to Hindu Law, and no presumption of invalidity, therefore, arises on the ground suggested.

“ The evidence of appellants’ witnesses is not that the existence of a son alone precludes an adoption, but no adoption can be legally made when there is a son or brother alive. This finds no support in Hindu Law,

and is in favour of the view that we should not look to the principle of the Hindu Law to determine the incidents of the custom. The respondents have proved only two instances of adoption where there was a son, and the Judge rightly observes that the evidence is insufficient to prove a custom. But we find that it has been judicially recognised. In the suit out of which S. A. No. 45 of 1905 arose, many instances of *illatom* adoption by persons who had sons were proved, and this Court held that the evidence was sufficient to prove the custom.

"We are, therefore, of opinion that Ramakishnamma's adoption is valid and dismiss this appeal with costs."

Their Lordships have had the opportunity of reading the judgments of the Subordinate Judge and of the learned Judges of the High Court at Madras in Appeal in the case, which in the High Court was Second Appeal No. 45 of 1905; that case has not been reported. In that case, which depended upon the existence of a custom in the Kamma families to which the parties belonged, "fifteen instances were cited in support of it (the custom), in the majority of which *illatom* took place when there were sons existing." Before the decision in Second Appeal No. 45 of 1905, it seems never to have been expressly decided that a Kamma or a Reddi could not or could lawfully take a son-in-law in *illatom* adoption when he had a son living, but having regard to the decision in that case and to the fact that the two Courts in the present suit agree that the adoption was valid in law, and as the family for very many years treated the *illatom* adoption as valid, their Lordships think that this appeal should be dismissed, and they will humbly advise His Majesty accordingly. The respondents, who did not appear at the hearing, will have such costs as they may be entitled to.

In the Privy Council.

NALLURI KRISTNAMMA AND ANOTHER

v.

KAMEPALLI VENKATASUBBAYYA AND
OTHERS.

DELIVERED BY SIR JOHN EDGE.

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